

be obeyed according to its terms until and unless modified or vacated by that court". The court further held that your petitioners had failed to prosecute their bill of review with diligence in as much as the bribery was discovered before your petitioners' motion for rehearing in the prohibition case was overruled.

7. Your petitioners thereafter filed a motion for rehearing in the cause which was overruled. (R. p. ----). Your petitioners then applied to the Supreme Court of Texas for a writ of error which was denied. (R. p----)

B.

Statement as to Jurisdiction

1. This court has jurisdiction to grant the relief prayed, because your petitioners have been denied an opportunity to prove the bribery alleged, in violation of the due process clause of the 14th Amendment to the Constitution of the United States. The decision of the highest court of Texas in which a decision could be had denied to your petitioners their fundamental right to be heard.

2. The Act of Congress of February 13, 1935, Section 237-B, 28 U.S.C.A. 344 (b), page 205, gives jurisdiction to this court "to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or prepared by the highest court of a state in which a decision could be had****where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution***** of the United States;"

3. The judgment which petitioners pray this court to review was rendered by the Court of Civil Appeals of Texas at El Paso on October 12, 1939. That court denied your petitioners' motion for rehearing in this cause on November 9, 1939. The Supreme Court of Texas denied your petitioners' application for a writ of error on January 3, 1940. On March 30, 1940, Mr. Justice William O. Douglas, by appropriate order, extended the time for filing of this petition until the expiration of a period of sixty days from March 30, 1940.

4. In this case it is contended by your petitioners: first, that the trial by a bribed jury in the proceeding which this case seeks to set aside was no trial at all and is void; and second, that the writ of prohibition heretofore referred to which was based upon bills of review not alleging the said bribery has no operation and effect on subsequent proceedings setting up said bribery; that although your petitioners stand ready to prove the said bribery they have not been accorded an opportunity so to do; and that the decision of the Court of Civil Appeals at El Paso applying the said writ of prohibition to this cause was arbitrary and unreasonable and constitutes a denial of due process in contravention of rights guaranteed to your petitioners under the 14th Amendment to the Constitution of the United States.

The question of denial of due process is inherent in this cause. It was raised by your petitioners, though not in so many words, from start to finish of this proceeding by their protestations against the fundamental injustice of allowing the said writ of prohibition to extend beyond the matters on which it was based. Indeed, it would have been difficult not to raise the question in this proceeding.

The Question Presented

The sole question here presented is whether or not the extension of said writ of prohibition beyond the allegations of the several bills of review, on which it was based, to the present bill of review, which sets up the ground of bribery (never theretofore alleged), is a denial of due process in contravention of the 14th Amendment to the Constitution of the United States, in arbitrarily and unreasonably denying to your petitioners the right to prove the said bribery and overthrow a judgment which will deprive them of several millions of dollars.

Reasons Relied on for Allowance of Writ

The Court of Civil Appeals of Texas at El Paso has decided a Federal question of substance not heretofore determined by this Court, or has decided it in a way not in accord with the applicable decisions of this Court. *Supreme Court Rule 38, Section 5 a.*

A copy of the entire record of this case, as certified to be true and correct, by the Clerk of the Court of Civil Appeals of Texas at El Paso, is hereby furnished, attached to, and made a part of this application in compliance with *Rule 38, Paragraph 1*, of the Rules of this Court.

WHEREFORE your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas at El Paso, commanding that court to certify and send to this Court for review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled, Number 3862, *W. E.*

Floyd, et al, vs. J. T. Eggleston, et al, and that the judgment of the said court of Civil Appeals at El Paso may be reviewed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as this Honorable Court may seem meet and just; and your petitioners will ever pray.

W. E. FLOYD, MRS. J. A. WINANS,
Independent executrix of the estate
of J. E. WINANS, deceased, and for
herself and as next friend for
NORMA MAE WINANS, a minor,
MARY SUE WINANS WHARTON,
joined by her husband, W. W.
WHARTON, MILDRED LOUISE MIL-
LER, joined by her husband, JAMES
MILLER.

By CRAMPTON HARRIS,
Counsel for Petitioners.